

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	Facility ID No. 22027
FRANK NEELY)	NAL/Acct. No. MB20041810024
)	FRN: 0008498685
Licensee of Station WGIV(AM))	File No. BR-20030730AHA
(formerly Station WLTC(AM)))	
Gastonia, North Carolina)	

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 2011**Released: June 6, 2011**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. The Audio Division has before it a Petition for Reconsideration ("Petition") filed on September 2, 2008, by Frank J. Neely, licensee of Station WGIV(AM), Gastonia, North Carolina ("Station"). The Petition seeks reconsideration of an August 6, 2008, Forfeiture Order in the amount of nine thousand dollars (\$9,000) for Neely's willful and repeated violation of Section 73.3526 of the Commission's Rules ("Rules") by failing to properly maintain a public file for the Station.¹ For the reasons discussed below, we deny the Petition.

II. BACKGROUND

2. Section III, Item 3 of the license renewal application form, FCC Form 303-S, requests that the licensee certify that the documentation required by Section 73.3526 or 73.3527, as applicable,² of the rules has been placed in the station's public inspection file at appropriate times. Neely indicated "No" to that certification, explaining that the issues/programs lists from April, 1998, through the first quarter of 2003 – the entire period of Neely's tenure as licensee – were missing.³ Neely stated that all issues/programs lists had been placed in the public file from the second quarter of 2003 to the present and that steps had been taken to assure that in the future all quarterly lists would be timely prepared and placed in the public file.

3. Due to Neely's failure to maintain the public files mandated by our Rules, on June 21, 2004, the Media Bureau ("Bureau") issued a Notice of Apparent Liability for Forfeiture in the amount of nine thousand dollars (\$9,000) to Neely.⁴ At the same time, the Bureau concluded that Neely's violation

¹ *Frank Neely*, Forfeiture Order, 23 FCC Rcd 11922 (MB 2008) ("*Forfeiture Order*").

² 47 C.F.R. § 73.3526 (public inspection file rule for commercial broadcast stations); 47 C.F.R. § 73.3527 (public inspection file rule for noncommercial educational broadcast stations).

³ *Letter to David Tillotson, Esq. from Peter Doyle, Chief, Audio Division*, reference 1800B3 (MB June 21, 2004) ("*NAL*").

⁴ *Id.*

did not constitute a “serious violation” of the Rules and that there was no evidence of a pattern of abuse.⁵ Accordingly, the Bureau granted the license renewal application despite the violation.⁶

4. Neely responded to the NAL on July 18, 2004, requesting cancellation of the proposed forfeiture. Neely argued that the public file requirement serves no useful purpose, the forfeiture assessed against him was three times greater than that assessed against other licensees for the same violation, and he was unable to pay the proposed forfeiture, submitting as evidence unsigned tax forms from the years 2001 to 2003.

5. In the *Forfeiture Order*, the Bureau rejected Neely’s arguments and imposed a nine thousand dollar (\$9,000) forfeiture. The Bureau found that the public file requirement serves the useful purpose of indicating to the public that a licensee is providing substantial service to meet the needs and interests of the community,⁷ the forfeiture was consistent with prior forfeitures for similar violations,⁸ and Neely had not provided the signed tax returns needed to document an inability to pay and could indeed pay, as evidenced by the sufficiency of his gross revenues.⁹

6. On September 2, 2008, Neely filed the Petition. In the Petition, Neely repeats several arguments considered and rejected in the *NAL*. Specifically, Neely argues that: (1) the public file requirement serves no useful purpose; (2) the normal forfeiture imposed for not maintaining a public inspection file is three thousand dollars (\$3,000) and thus the Bureau violated *Melody Music*’s principle that the agency treat similar violations in a similar manner;¹⁰ and (3) the forfeiture should have been reduced or waived based on his inability to pay. Neely also claims that the Commission *Forfeiture Policy Statement*¹¹ does not comply with the Small Business Regulatory Enforcement and Fairness Act (“SBREFA”) in that it was not specifically formulated to respond to SBREFA and applies to entities besides small businesses.¹²

III. DISCUSSION

7. Petitions for reconsideration are granted only in limited circumstances.¹³ Absent a material error or omission in the underlying order, or, unless a petitioner raises additional facts not known or existing until after the petitioner’s last opportunity to present such matters, reconsideration is not

⁵ *Id.*

⁶ *Id.*

⁷ *Forfeiture Order*, 23 FCC Rcd at 11923.

⁸ *Id.* at 11924, citing *Phoenix Broadcasting Group, Inc.*, Forfeiture Order, 23 FCC Rcd 10927 (MB 2008) citing *Faith Baptist Church, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 9146 (MB 2007) (\$10,000 forfeiture issued for eleven missing issues/programs lists); *Geneva Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 10642 (MB 2006) (same).

⁹ *Forfeiture Order*, 23 FCC Rcd at 11924-25. In addition to being unsigned, the tax returns listed a different corporate name than the name Neely claims to use.

¹⁰ *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965).

¹¹ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹² Petition at 1-2.

¹³ See 47 C.F.R. § 1.106; *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff’d sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 387 U.S. 967 (1966).

warranted.¹⁴ Moreover, a petition for reconsideration that merely reiterates arguments previously considered and rejected will be denied.¹⁵

8. Neely claims that the Bureau did not give reasoned consideration to his arguments in the *Forfeiture Order*.¹⁶ In fact, the Bureau afforded Neely's arguments reasoned analysis and rejected each one individually. First, the Bureau observed that the public file requirement serves several useful purposes, including safeguarding the public's ability to assess the station's service and ensuring the station's accessibility to a nexus within the community.¹⁷ That several regulatees think otherwise, as Neely contends in the Petition,¹⁸ does not change the Commission's position on this issue. Second, the Bureau found that a nine thousand dollar forfeiture was the standard forfeiture for public file violations lasting several years and cited several supporting cases.¹⁹ Third, the Bureau rejected Neely's inability to pay claim because he failed to provide proper documentation.²⁰ The Bureau also concluded that – assuming Neely's documentation were accepted as reliable – Neely's gross revenues were such that he could pay the forfeiture.²¹ To the extent Neely is simply restating the same arguments the Bureau previously rejected in the *Forfeiture Order*, they will not be reexamined here.²²

9. Finally, Neely argues that the Forfeiture Order is invalid because the Bureau's *Forfeiture Policy Statement*²³ does not meet the requirements of SBREFA. According to Neely, the *Forfeiture Policy Statement* does not satisfy SBREFA because it was not specifically formulated to respond to SBREFA and applies to small businesses and other entities alike.²⁴ Neely states that until the Commission adopts a specific policy or program for reducing or waiving the regulatory or statutory violations for small entities it regulates, it lacks the authority to impose any penalties on small entities. However, Neely cites no case law to support his contention.

10. The Commission has already held that the *Forfeiture Policy Statement* complies with Section 223 of SBREFA because it provides for reduction or waiver of forfeitures levied on small businesses pursuant to a series of specified downward adjustment factors.²⁵ Additionally, the United States District Court for the District of South Carolina recently rejected Neely's position in a case in a proceeding instituted to collect an outstanding forfeiture owed by Neely.²⁶ The Court held that

¹⁴ *Id.*

¹⁵ *Id.*; see also *National Association of Broadcasters*, Memorandum Opinion and Order, 18 FCC Rcd 24414, 24415 (2003).

¹⁶ Petition at 1-2.

¹⁷ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, ¶ 39.

¹⁸ Petition at 3.

¹⁹ *Forfeiture Order*, 23 FCC Rcd at 11924.

²⁰ *Id.* at 11924-25.

²¹ *Id.*

²² *WWIZ*, 37 FCC at 686 (holding that there is no obligation on the part of the Bureau to debate for a second time matters on which it has already deliberated and spoken).

²³ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17104-05, ¶ 39.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *U.S. v. Neely*, 595 F.Supp.2d 662, 668-69 (D.S.C. 2009).

“aforementioned Commission’s decisions, statements and analysis represent a sound interpretation of the [SBREFA]” because they do provide for the possibility of reductions and waivers of forfeitures for small businesses.²⁷ In fact, one of the specific downward adjustment factors, inability to pay,²⁸ was considered and rejected here because Neely did not provide sufficient and persuasive supporting documentation, as described in the *Forfeiture Order*. Consequently, this argument does not support reconsideration of the *Forfeiture Order*.

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED THAT the Petition for Reconsideration filed on September 2, 2008, by Frank Neely IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

²⁷ *Id.*

²⁸ *Forfeiture Policy Statement*, 12 FCC Rcd at Appendix A section II, Downward Adjustment Criterion (4).